

Decision for dispute CAC-UDRP-105915

Case number	CAC-UDRP-105915
Time of filing	2023-10-26 09:23:14
Domain names	vivendiboutique.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
--------------	--

Complainant

Organization	VIVENDI
--------------	----------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	--------------------------

Respondent

Organization	Skenzo Brokerage Team
--------------	------------------------------

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name <vivendiboutique.com>.

IDENTIFICATION OF RIGHTS

The Complainant owns the following trademark registrations for "VIVENDI":

- International trademark VIVENDI® n° 687855, registered and renewed since February 23, 1998;
- International trademark VIVENDI® n° 930935 registered and renewed since September 22, 2006.

The Complainant also owns various domain names, such as <vivendi.com> (registered on November 12, 1997) and the domain name <vivendigroup.net> (registered on November 29, 2016).

FACTUAL BACKGROUND

The Complainant, Vivendi, is a French multinational mass media conglomerate headquartered in Paris. The Complainant is active in music, television, film, video games, telecommunications, tickets and video hosting service and employs about 38 315 employees with total revenues of €9.6 billion worldwide in 2022.

The disputed domain name <vivendiboutique.com> was registered on October 16, 2023, and resolves to a registrar parking page with commercial links. Additionally, the disputed domain name is offered for sale.

PARTIES CONTENTIONS

COMPLAINANT:

- The disputed domain name is identical or confusingly similar to the protected mark

As regards the first element of the Policy, the Complainant supports that the disputed domain name is confusingly similar to its VIVENDI trademark, as it incorporates the trademark in its entirety.

According to the Complainant, the addition of the French generic term "BOUTIQUE" to the trademark VIVENDI is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods VIVENDI.

Therefore, the Complainant concludes that the disputed domain name is confusingly similar to the Complainant's trademark VIVENDI.

- Respondent does not have any rights or legitimate interest in the disputed domain name

As regards the second element of the Policy, the Complainant denies that the Respondent has been authorized to use the trademark VIVENDI in the disputed domain name. According to the Complainant, the Respondent is not known by the Complainant and has never been affiliated with the Complainant nor authorized by the Complainant in any way to use the VIVENDI trademark.

Furthermore, the disputed domain name resolves to a registrar parking page with commercial links. The Complainant considers that the current use of the disputed domain name does not represent a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name.

Therefore, the Complainant contends that the Respondent has no right nor legitimate interest in respect of the disputed domain name.

- The disputed domain name has been registered and is being used in bad faith

As regards the third element of the Policy, the Complainant contends that the Respondent has registered the disputed domain name and uses it in bad faith.

Given the distinctiveness of the Complainant's trademarks and worldwide reputation, the Complainant argues that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name resolves to a registrar parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is evidence of bad faith.

Finally, the Complainant contends that Respondent registered the disputed domain name with intent to sell it in bad faith within the meaning of Policy 4(b)(i).

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

- 1) The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights

The Panel is satisfied that the Complainant is the owner of international trademark registrations for VIVENDI that predate the disputed domain name registration.

The disputed domain name comprises the Complainant's well-known trademark VIVENDI with the addition of the French generic term "BOUTIQUE". The most distinctive part of the disputed domain name is the Complainant's mark, VIVENDI. In the Panel's view, the addition of the term "BOUTIQUE" increases rather than excludes the risk of confusion for the public. It in any way does not change the overall impression of the designation as being connected to the Complainant's trademark VIVENDI.

Furthermore, the addition of a purely generic top-level domain ("gTLD") ".com" does not, according to the Panel, add any distinctiveness or prevent the disputed domain name from being confusingly similar to the Complainant's trademark VIVENDI. Previous UDRP panels have also held that the gTLD is not to be considered when assessing whether a domain name is identical or confusingly similar to a trademark. See, e.g., *Wiluna Holdings, LLC v. Edna Sherman*, FA 1652781 (Forum January 22, 2016) or *Red Hat Inc. v. Haecke*, FA 726010 (Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark).

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, for the purposes of the first element of the Policy.

- 2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term "VIVENDI" as part of its disputed domain name. The Respondent is not in any way affiliated with the Complainant, nor is it authorized to register the disputed domain name. The Panel agrees with the Complainant that the Respondent is not commonly known by the disputed domain name or has legitimate interest over the disputed domain name.

The Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. The Respondent is not commonly known by the disputed domain name and has not been authorised by the Complainant to use the term "VIVENDI". Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

Thus, the Panel believes that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the second element of the Policy.

3) The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant that its trademark VIVENDI is distinctive and well-known globally. The Complainant’s well-known trademark VIVENDI predates the registration of the disputed domain name. The Panel finds that there appears no reason why the Respondent would register the Complainant's trademark as part of the disputed domain name, other than to create the impression that it is connected to the Complainant's business. Given the distinctiveness of the Complainant's trademark worldwide, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The fact that the Respondent has registered the disputed domain name that is confusingly similar to Complainant’s trademark indicates and in the absence of any evidence contrary (or any administratively compliant response at all) being put forward by the Respondent, that the Respondent, according to this Panel, had knowledge of the Complainant’s trademark and that it had such knowledge before the registration and use of the disputed domain name. Moreover, the disputed domain name is currently offered on sale which in the Panel's view may evidence the Respondent's bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **vivendiboutique.com**: Transferred

PANELLISTS

Name	Barbora Donathová
------	-------------------

DATE OF PANEL DECISION 2023-11-29

Publish the Decision